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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. MICKEY VERNON STANDINGWATER, Defendant and Appellant.	D036773 (Super. Ct. No. SCD151898)

APPEAL from a judgment of the Superior Court of San Diego County, Frank A. Brown, Judge. Reversed.

Mickey Vernon Standingwater was convicted of manufacturing methamphetamine, in violation of Health and Safety Code section 11379.6, subdivision (a). He admitted six prison priors, and was sentenced to state prison for a term of seven years (three years for manufacturing and one year each for four priors). Standingwater appeals, arguing (1) his conviction was tainted by an impermissibly admitted edited statement of a nontestifying codefendant, and (2) it was improper to instruct the jury with CALJIC No. 17.41.1. As we

agree with Standingwater's first assertion of error, and reverse on this basis, we do not address the second assertion.

FACTUAL BACKGROUND

Late in the morning on March 23, 2000, three San Diego sheriff's deputies went to a particular property at the Pala Indian Reservation in response to a call about suspicious activity. At the property they encountered Standingwater and Gonzalez, who appeared to be working on a trailer made from an old pickup bed, which was attached to a Chevrolet Suburban as if it were about to be towed.

One deputy looked into the Suburban through the window and saw a box on the front passenger floorboard. The box contained glass vials and jars, including containers holding liquid which the deputy associated with methamphetamine manufacture. There was a can of acetone next to the box. Standingwater and Gonzalez were then detained and the Narcotics Task Force (NTF) called.

NTF officers concluded the items seen in the front of the truck might have been used to manufacture methamphetamine, and found additional items associated with such activity in a further search of the Suburban. They also discovered a receipt for the Suburban identifying Standingwater as the purchaser.

After being advised of and waiving his *Miranda* rights, an officer testified, Standingwater said he had purchased the Suburban two or three weeks earlier. He said the only items in the vehicle he owned were tools and a transmission, and that none of his fingerprints should be on the glassware or other manufacturing equipment taken from the

Suburban. Standingwater was wrong; one of his fingerprints was in fact recovered from one of the glass jars on the floorboard.

Gonzalez also gave a statement after waiving his *Miranda* rights. The jury was told that Gonzalez had stated that one week earlier, he had stood guard in the middle of the night at his father's towing yard to keep people out while methamphetamine was being manufactured at the towing yard. The jury was told Gonzalez stated he had later smoked some of the manufactured methamphetamine, but it was "junk." Gonzalez also said he had tools and a cooler in the Suburban, but his fingerprints would not be found on any of the glassware. His fingerprints were not in fact found.

A forensic chemist testified that the substances and the equipment which had been found in the Suburban were used or created in manufacturing methamphetamine, with the main substance missing being ephedrine or pseudoephedrine.

PROCEDURAL BACKGROUND

By information filed May 5, 2000, the District Attorney of San Diego County accused Standingwater and Gonzalez of manufacturing methamphetamine. As to Standingwater alone, six prison priors were also alleged. Prior to trial, Standingwater moved to sever his trial from that of Gonzalez and exclude from evidence the statement Gonzalez made. The court denied the motion to sever, and also determined to allow in evidence an edited version of the statement made by Gonzalez. Jury trial began August 14, 2000, and on August 16, 2000, their deliberations commenced. After asking several questions of the court, on August 17, 2000, the jury found Standingwater guilty as charged, but could not reach a verdict as to Gonzalez.

At the sentencing on September 19, 2000, Standingwater admitted the six prison priors which had been alleged. The court sentenced Standingwater to the three-year lower term for the conviction, with four one-year enhancements added for four of the prison priors, and stayed terms on the remaining priors, for a total state prison term of seven years. Timely notice of appeal was filed.

STANDARD OF REVIEW

"Whether denial of a defendant's constitutional right of confrontation requires reversal is evaluated under the 'harmless beyond a reasonable doubt' standard of *Chapman v. California* (1967) 386 U.S. 18. [Citations.] That analysis generally depends on whether the properly admitted evidence is so overwhelming as to the guilt of the nondeclarant that a reviewing court can say the constitutional error is harmless beyond a reasonable doubt. [Citation.]" (*People v. Archer* (2000) 82 Cal.App.4th 1380, 1390.)

DISCUSSION

A. Factual Background

When interviewed at the time of his arrest, Gonzalez told officers that he had known Standingwater for a few months, having met him at Gonzalez's father's tow yard in Pala. Gonzalez also told the officers he had a tool chest and a lunch box of his own in Standingwater's Suburban. Gonzalez also told the officers that during the night one week earlier he stood guard at his uncle's towing yard to keep people out while Standingwater had manufactured some methamphetamine. Gonzalez said he had later smoked some of the methamphetamine made by Standingwater, but it was "junk."

Prior to trial, counsel for Standingwater filed a motion to sever his trial from that of Gonzalez, and also to exclude evidence of Gonzalez's statements made at the time of their arrest. The People responded that Gonzalez's statements could be edited to remove any reference to Standingwater, and thus were admissible.

At the beginning of trial, the point was argued to the court. The prosecution agreed to remove the reference by Gonzalez to having known Standingwater for several months, but asked that Gonzalez's statements about having stood guard at the tow yard while methamphetamine was being manufactured, having tried to smoke the product, and having possession of items in the Suburban be admitted, simply deleting references to Standingwater by name. The judge agreed with the prosecution's proposal.

At trial, the prosecutor asked the officer who had interviewed Gonzalez the following questions:

> "Q: When you spoke with [Gonzalez], did he also tell you that about one week prior to the date you were talking to him at his father's towing yard, between the hours of midnight and 4:00 or 5:00 a.m., that he was aware that methamphetamine was being manufactured?
>
> "A: Yes.
>
> "Q: And did he also tell you that at that time, that is the one week prior, he had been asked to keep people out of the tow yard during that time?
>
> "A: Yes, he did.
>
> "Q: Did he also tell you that when the manufacturing was done, that he smoked the product, but that it was junk, and he couldn't get high?
>
> "A: Yes.
>
> "Q: Did he also tell you that he had tools and a cooler in the truck?

"A: Yes.

"Q: Did he also tell you that his fingerprints would not be on any of the jars or equipment found in the box in the Suburban?

"A: Yes."

In argument, the prosecutor (after noting that Gonzalez and Standingwater were charged with manufacturing methamphetamine) told the jury, "I don't want you to believe if you attribute the chemicals that are found there to one person, it doesn't mean that the other person's not involved. Two people can be involved in this situation. [¶] So you've heard the definition of aiding and abetting, and that is with the knowledge of the unlawful purpose of the perpetrator, with the intent or purpose of committing or encouraging or facilitating, helping along the commission of the crime, by act or advice, aids, promotes, encourages or instigates the commission of a crime." Last, the prosecutor told the jury "that methamphetamine manufacture had occurred and was ready to occur again, and that both defendants were involved."

Standingwater's defense counsel argued to the jury that "[y]ou can't assume, as the prosecutor would have you assume, that Mr. Standingwater was involved or was even present at Mr. Gonzalez' father's garage, or that he tried the methamphetamine." Counsel for Gonzalez simply asked the jury to disbelieve the evidence which had been received about Gonzalez's statements to the police, and also argued that keeping people out of the place where methamphetamine was being manufactured was not an affirmative act so as to impose aiding and abetting liability. Over the course of a day's deliberations, the jury repeatedly asked questions about Gonzalez's statement and whether the statement required

support by other evidence, and eventually the jury found Standingwater guilty, but could not agree as to Gonzalez.

B. Governing Principles

In *People v. Aranda* (1965) 63 Cal.2d 518, 528-530, the California Supreme Court held that a nontestifying defendant's statements which inculpate a codefendant are generally unreliable and violate the codefendant's rights of confrontation and cross-examination, anticipating a later ruling to the same effect by the United States Supreme Court in *Bruton v. United States* (1968) 391 U.S. 123. As our Supreme Court has later observed: "Broadly stated, the rule of *Bruton v. United States* . . . declares that a nontestifying codefendant's extrajudicial self-incriminating statement that inculpates the other defendant is generally unreliable and hence inadmissible as violative of that defendant's right of confrontation and cross-examination, even if a limiting instruction is given." (*People v. Anderson* (1987) 43 Cal.3d 1104, 1120 (*Anderson*).)

As the *Anderson* court pointed out, "what is material for *Bruton-Aranda* analysis is not how the statement is classified in the abstract . . . but rather whether on the facts of the individual case it operates to inculpate the other defendant." (*Anderson, supra,* 43 Cal.3d at p. 1123.) More recently, our Supreme Court has also stated that "editing a nontestifying codefendant's extrajudicial statement to substitute pronouns or similar neutral terms for the defendant's name will not invariably be sufficient to avoid violation of the defendant's Sixth Amendment confrontation rights. Rather, the sufficiency of this form of editing must be determined on a case-by-case basis in light of the statement as a whole and the other evidence presented at the trial." (*People v. Fletcher* (1996) 13 Cal.4th 451, 468 (*Fletcher*).)

We proceed to this individualized analysis "in light of the statement as a whole and the other evidence presented at the trial."

C. Analysis

The People argue that "[i]t is impossible to read into [Gonzalez's] statements any reference to appellant. By describing in general what was going on at the tow yard without mentioning any particular people who were involved, anyone could have been involved." This argument misses the essential point: the only person charged and before the jury to whom the statement could *possibly* have referred was Standingwater.

The essential syllogism is this: A and B are jointly charged with manufacturing methamphetamine. The equipment is found in B's truck, in the presence of A and B. That it was in fact used for manufacturing methamphetamine is demonstrated by the statement of A who says that he stood guard while X manufactured the drug, although the drug produced was of low quality. One fingerprint of B is found on the equipment X used to manufacture the drug, now located in B's truck. Who is X?

That X = B is logically compelled by the above evidence. That the manufacturer of methamphetamine for whom Gonzalez had stood watch was only, and could have been only Standingwater, is thus compelled by the evidence before the jury.[1] As another court has held in a similar instance, "[w]hile appellant's name is not mentioned in the statement, the existence of another participant is obvious from the statement itself. . . . Moreover,

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[1] While the evidence in this case might easily have demonstrated Standingwater's unlawful possession of materials for manufacturing methamphetamine, that there had been

appellant's . . . car . . . figure[s] prominently in the description of the commission of the crime. A juror who wonders who the other participant is 'need only lift his eyes to [appellant], sitting at counsel table, to find what will seem the obvious answer, . . .' [Citation.] The statement, even with redaction, facially incriminates appellant." (*People v. Archer, supra*, 82 Cal.App.4th at p. 1390.)

In this case, Gonzalez's statement established (1) methamphetamine had been manufactured and (2) his fingerprints would not be on any of the methamphetamine manufacturing equipment found in (3) the Suburban belonging to Standingwater, in whose company Gonzalez was found after the manufacturing of methamphetamine occurred. Essentially, these elements, when coupled with the single fingerprint on the glassware of Standingwater, constituted the entirety of the case against Standingwater.

We return to the analysis of *Fletcher, supra*: "A confession redacted with neutral pronouns may still prove impossible to 'thrust out of mind' [citation] if, for example, it contains references to . . . information that readily and unmistakably identifies the person referred to as the nondeclarant defendant." (*Fletcher, supra*, 13 Cal.4th at pp. 465-466.)[2]

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an actual manufacturing of the substance was shown exclusively through the (edited) statement of Standingwater's codefendant, Gonzalez.

[2] In *Fletcher*, our Supreme Court recited an example applicable herein: "This point is illustrated by the facts of *People v. Terry* (1970) 2 Cal.3d 362. [¶] In *Terry*, two defendants . . . were jointly charged with two murders. At their joint trial, the prosecution introduced a confession by Allen that implicated Terry. The confession was redacted by substituting the word 'deleted' for the name 'Harold.' But, as this court remarked, '[t]he result was somewhat ridiculous' and 'it must have been obvious to everyone that "deleted" and Terry were one and the same.' (*People v. Terry, supra*, 2 Cal.3d 362, 384-385.) . . . Thus, '[t]he jury was bound to know that "deleted" must have been Terry' and Allen's confession 'clearly implicated Terry and accused him of both . . . homicides.' (*Ibid.*)" (*Fletcher, supra*, 13

Again, in this case, with Gonzalez jointly charged with Standingwater as a methamphetamine manufacturer, the only person to whom the statement of Gonzalez could possibly have referred was Standingwater.

Thus, as in *Fletcher*, "redaction that replaces the nondeclarant's name with a pronoun or similar neutral and nonidentifying term will adequately safeguard the nondeclarant's confrontation rights unless the average juror, viewing the confession in light of the other evidence introduced at trial, could not avoid drawing the inference that the nondeclarant is the person so designated in the confession and the confession is 'powerfully incriminating' on the issue of the nondeclarant's guilt." (*Fletcher*, *supra*, 13 Cal.4th at p. 467.) There is no doubt that in this case Gonzalez's statement was "powerfully incriminating" on the issue of Standingwater's guilt of the charged offense.[3]

Finally, to paraphrase *Fletcher*, "[b]ecause [Gonzalez's] statement powerfully incriminated [Standingwater] even after redaction, its admission in evidence over [Standingwater]'s objection violated his Sixth Amendment right of confrontation." (*Fletcher*, *supra*, 13 Cal.4th at p. 470.) That holding applies to this case also, and under the standard of review set out earlier, as the properly admitted evidence does not overwhelmingly demonstrate Standingwater's guilt of the charged offense, we cannot find

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Cal.4th at p. 466, fn. omitted.) In like manner, the unspecified person who asked had Gonzalez to stand guard at the uncle's tow yard while he manufactured methamphetamine could only have been Standingwater.

[3] That Gonzalez's statement was the central evidentiary fact in this case is demonstrated by the jurors' repeated questions concerning the statement.

this error harmless. (See, e.g., *People v. Archer*, *supra*, 82 Cal.App.4th at pp. 1394-1395.) Reversal is thus required.

DISPOSITION

The judgment is reversed.

HUFFMAN, J.

WE CONCUR:

KREMER, P. J.

McINTYRE, J.